



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

October 26, 2021

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Anthony Cimmino**
Tax Registry No. 933693
121 Precinct
Disciplinary Case No. 2019-20841

Police Officer Vincenzo Trabolse
Tax Registry No. 942882
121 Precinct
Disciplinary Case No. 2019-20842

The above named members of the service appeared before Assistant Deputy Commissioner Nancy R. Ryan on April 22 and 23, 2021, charged with the following:

DISCIPLINARY CASE NO. 2019-20841

1. Police Officer Anthony Cimmino, on or about September 28, 2018, at approximately 1320, while assigned to 121 PCT and on duty, in the vicinity of [REDACTED] Richmond County, was discourteous, in that he stated in sum and substance, "shut the fuck up you little shit," to William Colon without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 2

PUBLIC CONTACT - GENERAL

DISCIPLINARY CASE NO. 2019-20842

1. Police Officer Vincenzo Trabolse, on or about September 28, 2018, at approximately 1320, while assigned to 121 PCT and on duty, in the vicinity of [REDACTED] Richmond County, abused his authority as a member of the New York City Police Department, in that he threatened to damage William Colon's door without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

2. Police Officer Vincenzo Trabolse, on or about September 28, 2018, at approximately 1320, while assigned to 121 PCT and on duty, in the vicinity of [REDACTED] [REDACTED] Richmond County, abused his authority as a member of the New York City Police Department, in that he entered 11 Cottage Place, Apt 2L in Staten Island without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

3. Police Officer Vincenzo Trabolse, on or about September 28, 2018, at approximately 1320, while assigned to 121 PCT and on duty, in the vicinity of [REDACTED] [REDACTED] Richmond County, wrongfully used force, in that he repeatedly punched William Colon, about the body without police necessity.

P.G. 221-02, Page 2, Prohibitions 11 & 12

USE OF FORCE

4. Police Officer Vincenzo Trabolse, on or about September 28, 2018, at approximately 1320, while assigned to 121 PCT and on duty, in the vicinity of [REDACTED] [REDACTED] Richmond County, wrongfully used force, in that he used a Taser against William Colon without police necessity.

P.G. 221-08

**USE OF CONDUCTED
ELECTRICAL WEAPONS
(CEW)**

In a Memorandum dated June 23, 2021, Assistant Deputy Commissioner Nancy R. Ryan found Police Officer Anthony Cimmino Guilty of the sole Specification and Police Officer Vincenzo Trabolse Not Guilty of all Specifications, in Disciplinary Case Nos. 2019-20841 and 2019-20842, respectively.

Having read the Memorandum and analyzed the facts of this matter, I approve the findings for both officers, but disapprove the penalty for Police Officer Cimmino.

I have reviewed the trial decision and memorandum by Assistant Deputy Commissioner Ryan regarding Police Officer Anthony Cimmino. Police Officer Cimmino made a quick, discourteous remark to an individual during their brief encounter. Police Officer Cimmino was not justified in making his remark as there were no exigent or stressful circumstances which would have excused his comment.

I have determined, while considering Police Officer Cimmino's prior instance of discourteous misconduct, that the Disciplinary System Penalty Guidelines' aggravated penalty of ten (10) vacation days for discourtesy is appropriate in this matter.

POLICE OFFICER ANTHONY CIMMINO
POLICE OFFICER VINCENZO TRABOLSE

DISCIPLINARY CASE NO. 2019-20841
DISCIPLINARY CASE NO. 2019-20842

A penalty of thirty (30) vacation days, as recommended by Assistant Deputy Commissioner Ryan, is excessive in light of cases with similar misconduct.

Therefore, based on the above, Police Officer Cimmino shall forfeit ten (10) vacation days, as a disciplinary penalty.


Dennis Shea
Police Commissioner



POLICE DEPARTMENT

June 23, 2021

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In the Matter of the Charges and Specifications	:
- against -	:
	:
Police Officer Anthony Cimmino	:
Tax Registry No. 933693	:
121 Precinct	:
	:
Police Officer Vincenzo Trabolse	:
Tax Registry No. 942882	:
121 Precinct	:
-----X	

Case Nos.

2019-20841

2019-20842

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB: Claudia Avin, Esq.
Civilian Complaint Review Board
100 Church Street
New York, NY

For the Respondent: Stuart London, Esq.
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New York, NY 10038

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 1003

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2019-20841

1. Police Officer Anthony Cimmino, on or about September 28, 2018, at approximately 1320, while assigned to 121 PCT and on duty, in the vicinity of [REDACTED] [REDACTED] Richmond County, was discourteous, in that he stated in sum and substance, "shut the fuck up you little shit," to William Colon without sufficient legal authority.
P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT – GENERAL

Disciplinary Case No 2019-20842

1. Police Officer Vincenzo Trabolse, on or about September 28, 2018, at approximately 1320, while assigned to 121 PCT and on duty, in the vicinity of [REDACTED] [REDACTED] Richmond County, abused his authority as a member of the New York City Police Department, in that he threatened to damage William Colon's door without sufficient legal authority.
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P.G. 221-02, Page 2, USE OF FORCE
Prohibitions 11 & 12
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P.G. 221-08 USE OF CONDUCTED
ELECTRICAL WEAPONS (CEW)

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on April 22 and 23, 2021. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The CCRB called William Colon as a witness. Respondents called Police Officer Kevin Geoghegan and testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Trabolse Not Guilty of the charged misconduct in Disciplinary Case No. 2019-20842, and I find Respondent Cimmino Guilty of the sole Specification in Disciplinary Case No. 2019-20841. I recommend that Respondent Cimmino forfeit 30 vacation days.

ANALYSIS

It is undisputed that on September 28, 2018, at approximately 1330 hours, Respondent Trabolse traveled to a residence in the 121 Precinct in response to an assault in progress call. Upon arrival, he observed a female (Person A) with facial bruises on the ground floor of the building. He proceeded to an apartment on the second floor, which he entered. Mr. William Colon was inside the apartment. During the course of his interaction with Mr. Colon, Respondent Trabolse punched him several times, tased him, and arrested him. Respondent Cimmino arrived later and was on the scene while Colon was being removed from the apartment. Respondent Cimmino exchanged words with Colon.

At issue in this case is whether Respondent Trabolse had sufficient legal authority to enter the apartment and whether his punches and use of the Taser on Mr. Colon were wrongful uses of force. Also at issue are what words were used by Respondent Cimmino in his encounter with Mr. Colon and whether his interaction constituted discourtesy towards Mr. Colon.

William Colon testified that he is 27 years old and has a history of diabetes, asthma and mental health issues. He is four foot eight inches tall and on September 28, 2018, he weighed approximately 83 pounds. On that date, at 1330 hours, he was in his second floor apartment with his brother. Colon's girlfriend, Person A, had been in the apartment earlier. They had argued and he alleged that she damaged property in the apartment. An hour after Person A left, Colon was sweeping in the apartment when someone knocked at the door and began turning the doorknob. Colon asked who was there. According to Colon, the person did not identify himself but just said, "Come to the hallway. Step outside." Although he did not want to do so, Colon opened the door slightly, with the chain attached; an officer, Respondent Trabolse, then stuck his foot in the door. Respondent Trabolse told him he was going to call ESU to take down the door if he didn't open it. Colon admitted that he voluntarily opened the door and could have instead kept the door shut and forced Respondent Trabolse to call ESU and break in the door, as he had threatened to do. (Tr. 18-24, 33, 53, 60-61, 65-67)

After he opened the door, Respondent Trabolse told Colon to step outside. Colon said he did not want to step outside and Respondent Trabolse then "pushed me back into the apartment" and entered the premises without permission, along with his partner. Respondent Trabolse pushed Colon back to the bed. Respondent Trabolse was on top of Colon and holding him with both hands. Because Respondent Trabolse was heavier than Colon, he felt like he was trapped and could not breathe. Colon's brother was warning Respondents that Colon had medical issues. (Tr. 22-26)

Next, a third officer joined Respondents and someone handcuffed Colon's left arm; he could not recall who did so, because "they were all on me." The officers then flipped Colon onto his stomach and he felt scared and confused. At that point, he felt Respondent Trabolse punching him four or five times on the right side of his ribs and arm, then putting pressure on his

back. Respondent Trabolse pulled out a Taser and Colon told him, "I didn't do anything" and asked why the officers were there. His brother told them that Colon had medical issues and "it's going to be bad" if he were tased. Colon had his hands behind his back and Respondent Trabolse punched him multiple times before he was handcuffed. Colon admitted that he initially did not allow the officers to handcuff him because he wanted them to hear his explanation that he had not done anything wrong. Colon was hit twice with a Taser, which made him feel "really weak and woozy." He also lost consciousness momentarily and "couldn't think straight." He denied grabbing or throwing the Taser cartridge, but admitted to moving his arms. By the time he was tased, there were approximately seven officers present. (Tr. 26-30, 35, 39-40, 43, 48, 57, 73-75, 82-83)

Colon then dropped from the bed and the officers dragged him out into the hallway. Colon admitted that, at that point, he was using profanity because he "was very upset." He told Respondent Cimmino to "shut the fuck up," and Respondent Cimmino replied, "You shut the fuck up, you little shit," then slapped his back. Officers brought Colon to Person A and asked her if Colon was the one "who did it" and she said no. Nonetheless, he was placed in a police vehicle and brought to a precinct. (Tr. 31, 58-59, 94-95; CCRB Exs. 2D, 2E at 13:40:48-59)

Colon further testified that he was later taken to Richmond University Medical Center for pain and high blood sugar. X-rays were taken and he was given pain medication and remained in the hospital for five or six days. He did not suffer any fractures but had red marks on his shoulder from "them punching me." He agreed that the punches did not break the skin or cause a contusion and was not sure whether they left a mark. Colon acknowledged that he brought a lawsuit against the City on the advice of counsel, and that he can be heard on the video mentioning a potential lawsuit. (Tr. 32-33, 90-91, 99-100)

Respondent Trabolse testified that at the time of the incident, he and his partner, Police Officer Pollato, responded to an assault in progress at a multi-dwelling apartment building. Upon arrival, Respondent Trabolse saw an argument between a female, Person A, who was standing in the first floor hallway, and Colon, who was on the second floor, directly above her. He further stated Person A “had a big bruise over her right eye.” Respondent Trabolse asked if she was okay and she answered, “Do I look like I’m okay?” Person A did not tell Respondent Trabolse what had happened at that point. Colon retreated to his apartment and Respondent Trabolse walked upstairs to the apartment door, intending to arrest Colon. Respondent Trabolse asked the superintendent, who was present, where Colon went and he pointed to the apartment door. Respondent Trabolse admitted that during his CCRB interview, he did not mention having seen Colon before reaching the apartment. (Tr. 124-26, 138, 152-55, 183-88)

Upon arrival at the apartment, Respondent Trabolse knocked on the door and said, “Police” multiple times. Colon opened the door with a chain, and asked what was going on. Respondent Trabolse realized the significant height and weight differential upon seeing Colon at the door. Pollato explained to Colon that a female was assaulted and Respondent Trabolse continued giving Colon commands to open the door and step outside. Respondent Trabolse also placed his foot in the door to prevent Colon’s locking it. He told Colon that if he shut the door, he would have ESU come and knock it down. Colon finally shut the door to remove the chain, then opened it. Respondent Trabolse then observed him “back up a few steps,” and was unsure whether he was “going to get a weapon,” so he immediately grabbed Colon’s right arm. (Tr. 126-28)

He initially tried not to put his body weight on Colon as he would have done with a larger subject, because “I was afraid I was going to hurt him.” He gave Colon orders to give him his hands and not to resist. He placed Colon on the bed because it was the safest and easiest option.

Meanwhile, Colon's brother was standing on the bed, recording the incident on his phone, which created a "dangerous situation" for the officers. Initially, Colon was lying on his back and Respondent Trabolse managed to place a handcuff on his left wrist. He then placed "a small portion" of his weight on Colon "just to control him," because he was flailing his arms and not giving up his right hand, which Colon kept underneath himself. Respondent Trabolse was afraid that he might accidentally "rip his arm out of his socket." Eventually, Respondent Trabolse "punched him four times around his biceps area" because he would not release his right arm. (Tr. 128 31, 139 141, 159)

The punches did not get Colon to give up his hand so then Respondent Trabolse used his Taser. He did not use his asp because it "could have damaged" Colon. Respondent Trabolse did not want to shoot the Taser at Colon because the prongs could have penetrated his back. Instead, he "drive¹ stunned him," meaning that he pressed the prongs directly on Colon with the cartridge out of the Taser for approximately a second and a half. He testified that the footage shows the Taser, which sparks for five seconds, was still sparking after he stopped pressing it on Colon. Respondent Trabolse tried to place the cartridge in his pocket but it fell on the floor instead, which he did not realize until later. Immediately after using the Taser, Respondent Trabolse got compliance from Colon. Respondent Trabolse called out that Colon was cuffed in order to end the struggle and make clear to the other officers that no more force was needed. (Tr. 131-33, 136, 142, 166)

Respondent Trabolse asserted that he and his colleagues treated Colon more gently than most subjects because he is smaller:

We tried to be as gentle as we can with him because of his size. Anybody bigger than that we would have taken him down to the ground and cuffed him on the ground and as you can see for multiple seconds we're letting him stand there and giving him directions.

¹ The transcript contains the word "dry," but the actual term is "drive."

I threatened him with the TASER, I figured if he put his hands behind his back it could end right there. (Tr. 140)

Respondent Trabolse further testified that after being stunned, Colon went limp for a few seconds, which Respondent Trabolse believed “was him doing that, not the after effects.” Colon never lost consciousness or fainted. Colon then became belligerent and used profanity while being led down the stairs. (Tr. 133-34)

Respondent Trabolse filled out a TRI report for the incident. He checked off hand strike, forcible takedown and conducted electrical weapon as the types of force used. He recorded “overcome resistance or aggression” as the reason for using force. He wrote that Colon was offered medical attention. (Tr. 135-36; Resp. Ex. A)

Police Officer Kevin Geoghegan testified that during the incident, he responded to a call for an assault in progress. Upon arrival at the building, he walked upstairs and entered an open bedroom door. He observed Respondent Trabolse and Police Officer Castiglia “struggling with a man [Colon], trying to handcuff him.” Colon was on a bed. Including Geoghegan himself, there were eight MOS in the room at that point. Respondent Trabolse and Castiglia were attempting to get Colon’s hands behind his back but he was resisting. He admitted he could not see Colon’s hands in that moment, because he was positioned behind Castiglia and Respondent Trabolse. He knew that Colon was resisting because “he’s moving his body around; the officers are struggling with him; they’re giving him commands.” Geoghegan acknowledged that Colon was much smaller than the officers but asserted that size does not determine whether someone can resist arrest; individuals can, for example, put their hands underneath themselves to avoid being handcuffed. While officers were struggling with Colon, another man stood on the bed, recording the incident. (Tr. 103-05, 110-11, 115, 118-19)

Geoghegan next observed Respondent Trabolse pull out a yellow Taser and “drive stun the perpetrator on the right side of the body.” He did not see Colon take the Taser cartridge and throw it across the room. Immediately after, someone said that Colon had been handcuffed and no one else touched him. Officers stood Colon up and Geoghegan helped walk him out of the apartment and down the stairs; another MOS took Colon outside to an RMP. (Tr. 105, 112-14)

Geoghegan watched his body camera footage (Ex. 2D) and said that Respondent Trabolse’s punches did not seem to have any effect on Colon in terms of getting him to comply. (Tr. 106)

Respondents’ counsel introduced the hearsay statement (from a GO-15) of Police Officer Michael Castiglia. When Castiglia arrived and entered Colon’s residence, Respondent Trabolse and his partner were already inside. Respondent Trabolse already had his hand on Colon’s arm and Castiglia grabbed the other one. Respondent Trabolse was trying to tell Colon to put his hands behind his back but he would not listen, so Castiglia and Respondent Trabolse placed him on the bed to handcuff him. Respondent Trabolse punched Colon, but was still unable to get compliance. Colon continued flailing and refusing to put his hands behind his back. Respondent Trabolse then threatened Colon with the Taser if he did not comply; he eventually did use the Taser, which was effective. Castiglia cuffed the hands successfully and told Respondent Trabolse, who stopped using the Taser. No further force was used once Colon was tased and handcuffed. Together, they stood Colon up and he seemed “weak” from the Taser. (Resp. Ex. C: pgs. 7-9, 11-13, 16-17, 23, 25)

After coming downstairs, Castiglia saw Person A, and observed injuries; specifically that “she had marks on her face.” He was not present when Respondent Trabolse spoke to her. (*Id.* at pgs. 22, 27)

Respondent Cimmino testified that he was the operator for his partner, Sergeant Griffin, on the day in question. He was the last at the scene of the incident and was not in the bedroom when Colon was arrested. He testified on direct examination that when he walked past Colon on the stair case, Colon told him to “shut up” and cursed. Respondent Cimmino replied, “No, you shut up.” When asked if he cursed at Colon, he answered, “No, I don’t think so.” After being shown the video (CCRB Ex. 2E), Respondent Cimmino conceded that he actually answered, “You shut the fuck up.” He asserted, “I didn’t start it. I’m allowed to say it if somebody says it.” Respondent Cimmino claimed not to remember calling Colon a “little shit.” (Tr. 207-08, 211, 226)

As Respondent Cimmino was walking by Colon on the staircase, he touched Colon slightly so that he could pass. Respondent Cimmino denied striking him. (Tr. 209, 211)

Regarding the missing Taser cartridge, Respondent Cimmino testified that he filled out the paperwork (UF-61), based on his own perceptions of what transpired. In the UF 61, Respondent Cimmino recorded that “a violent perp...grabbed the cartridge out of UMOS Taser and threw it across the room.” He did not remember speaking to Respondent Trabolse about the UF-61. He claimed not to recall when he became aware the cartridge was missing, but was asked to report it at the precinct. Later that day, he learned the UF-61 was inaccurate but admittedly neglected to file an amended report (DD 5). He did not return to the apartment to recover the cartridge. Respondent Cimmino said he did not remember telling CCRB during an interview that the UF 61 was based on information received from Respondent Trabolse. (Tr. 212 16, 221-24)

Video evidence from several Body Worn Cameras and the cell phone of Colon’s brother was also admitted in this case. Portions of the incident were shown on clips as noted below:

- 13:33:10-13:34:13— Respondent Trabolse and Police Officer Pollato drive to the location, and hug some small children outside the building. Respondent Trabolse tells them to wait outside while he deals with the situation. (CCRB Ex. 2A)
- 13:34:13-28— Person A is standing at the foot of the stairs, yelling. She has a mark above her eye. Respondent Trabolse says to her, “Whoa, look at your eye. Are you okay?” Person A answers, “No, I’m not okay. Do I look okay?” (CCRB Ex. 2A)
- 13:34:28-13:34:52— Respondent Trabolse asks Person A, “Is this the one who hit you?” She groans. Respondent Trabolse encounters the superintendent, who identifies Colon’s door. Respondent Trabolse and Pollato walk to the door and Respondent Trabolse tells him to have his Taser ready “just in case.” (CCRB Ex. 2A)
- 13:34:52-13:36:10— Respondent Trabolse knocks on the door and Colon initially refuses entry. Respondent Trabolse asks him repeatedly to open the door and he keeps asking, “For what?” Pollato says that a woman downstairs was assaulted and Colon says he does not know what they are talking about. Colon eventually offers to unlock the door but says he will first need to close the door to unhook the chain. Respondent Trabolse warns him that if he does not then open the door back up, he will call ESU to knock the door down. Colon says, “There’s no reason to, but okay.” (CCRB Ex. 2A)
- 13:36:10-20— Colon opens the door and stands at the threshold. Respondent Trabolse tells him to step outside but Colon says he does not want to. Colon then steps back somewhat, while it appears that Respondent Trabolse tries to grab his wrist and follows him into the home. Both Colon and his brother ask, “What are you coming in my house for?” (CCRB Exs. 1, 2A)
- 13:36:20-40— Respondent Trabolse grabs Colon’s hand and pushes him toward the bed. As he is leaning on the bed, Colon asks repeatedly, “What are you doing?” and says, “I didn’t do nothing.” Respondent Trabolse leans on Colon’s chest with his right forearm. Meanwhile, Colon’s brother shouts out various medical issues that Colon suffers from. Respondent Trabolse tells Colon to stop resisting. (CCRB Exs. 1, 2A)
- 13:36:40-13:37:02— Respondent Trabolse points the Taser at Colon and tells him again to stop resisting. Colon and his brother continue shouting, “For what?” Colon says multiple times, “I didn’t do nothing.” Respondent Trabolse handcuffs Colon’s left wrist. There is a sound of handcuffs being closed. (CCRB Exs. 1, 2A)
- 13:37:02-22— Respondent Trabolse and the other officers try to turn Colon around so that he is facing the bed, but he resists and does not give up his hands. Respondent Trabolse says, “I’m gonna tase you.” Colon continues to deny that he did anything wrong. (CCRB Exs. 1, 2A)
- 13:37:22-34— While officers are pushing Colon face down onto the bed, his brother is shouting that Colon has medical issues and goes to therapy. The brother then gets on the bed, leans in close to Colon and yells, “Stop fighting! Just let them do what they gotta do, bro.” (CCRB Ex. 2A)
- 13:37:34-50— Colon’s brother stands up on the bed. Respondent Trabolse punches Colon’s right arm and shoulder blade a total of four times while ordering him, “Give me your hands.” Next, Respondent Trabolse applies the Taser to Colon’s shoulder blade for approximately three seconds. Colon groans while being tased; the Taser continues

- buzzing after Respondent Trabolse removes it from Colon's body. Police Officer Geoghegan says that Colon has been handcuffed and Respondent Trabolse says, "He's handcuffed? Alright he's cuffed, he's cuffed, he's cuffed." (CCRB Exs. 2A, 2D, 2E, 2F)
- 13:37:50-13:39:14 Colon's brother continues berating officers and says that he wants to press charges against Person A for punching his brother and vandalizing their home. As officers get Colon to his feet, he appears to go limp and nearly falls over. Respondent Trabolse and Police Officer Castiglia each hold onto one of Colon's arms to keep him up. He eventually asks the brother to get off the bed but he refuses. Colon then starts shouting "lawsuit" and using profanity. (CCRB Exs. 2A, 2D, 2F)
 - 13:39:14-52— Officers lead Colon out to the hallway and Respondent Trabolse asks to have the victim identify him. When Person A sees Colon, she shakes her head. Colon addresses the officers and says, "All you n***as did this shit for no reason." (CCRB Ex. 2A)
 - 13:39:52-13:40:43— Respondent Trabolse walks down the steps to Person A. She tells him that she and Colon were "tussling" and she fell on the floor. She also states that she was not the one who called the police. In the background, Colon can be heard yelling at officers upstairs. Respondent Trabolse and Person A argue back and forth about whether she said that Colon hit her when Respondent Trabolse initially arrived. (CCRB Exs. 2A, 2G)
 - 13:40:44-48— Upstairs, Colon tells his brother, "It's alright bro, it's alright. She's saying I didn't do it and they're trying to get her to say I did it." (CCRB Ex. 2D)
 - 13:40:48-59— As Respondent Cimmino walks upstairs, he tells the other officers to get Colon into an RMP. Colon turns to him as he passes and says, "Shut the fuck up." Respondent Cimmino answers, "You shut the fuck up, you little shit. Get the fuck out of here." As he walks by, Respondent Cimmino smacks Colon's left shoulder; a smacking noise is audible. Colon reiterates, "Fucking pig. Shut the fuck up." (CCRB Exs. 2D, 2E)
 - 13:41:50-13:42:47 Respondent Trabolse asks for Person A's ID; she says she does not have any. He then takes photos of Person A's face and neck. She begins to cry and says she just wants to go home. Respondent Trabolse and Sergeant Griffin offer Person A an ambulance but she refuses. (CCRB Ex. 2A)

Respondent Trabolse

Specification 1 charges Respondent Trabolse with abusing his authority by threatening to damage William Colon's door. The video clearly demonstrates that Respondent Trabolse made such a statement. Therefore, the question is whether, based on the circumstances, he in fact had the authority to call ESU and forcibly enter the apartment. I find that he did.

At the time that he was speaking to Colon at the threshold of the apartment, Respondent Trabolse lacked an arrest warrant. However, there was probable cause to believe that Colon had assaulted Person A, based on the description of the incident and the ID of the perpetrator, the injuries on Person A and the argument taking place when officers arrived. Therefore, Respondent Trabolse could have obtained a search warrant and called for ESU to come forcibly open the door so that he could arrest Colon. While this was not all explained in detail to Colon, it was true that Respondent Trabolse could have ultimately had the door knocked down. Respondents in similar cases have been found not guilty of abuse of authority when warning suspects about potential enforcement actions. *See Disciplinary Case No. 2015-13176* (June 27, 2016) (respondent not guilty for telling a resident that he would have ESU make a forcible entry into her home after obtaining a search warrant); *Disciplinary Case No. 2018-18541* (Nov. 22, 2019) (respondent not guilty for telling a motorist that he would issue him a summons or arrest him if he saw him speeding again). Respondent Trabolse explained to Colon what would eventually happen if he shut the door and refused to open it again. Consequently, I find that Respondent Trabolse did not abuse his authority by making such a statement and find him not guilty of Specification 1.

Specification 2 charges Respondent Trabolse with abusing his authority by entering Colon's apartment without sufficient legal authority. Respondent Trabolse did not have a warrant to arrest Colon. The issue is whether there was an exception to the warrant requirement. I find that although there was no consent, Respondent Trabolse was in hot pursuit of Colon.

After Respondent Trabolse asked Colon to step outside numerous times and warned him to open the door, Colon eventually promised to close and then re-open the door after unlocking the chain. Once he opened the door wide, Respondent Trabolse appeared to grab Colon's wrist,

causing him to recoil backwards. Respondent Trabolse then entered the apartment. Colon and his brother both voiced anger at officers entering their home and asked what they were there for.

Precedent regarding implied consent has often involved cases wherein a subject opened a door and stepped aside without verbally objecting to officers' entry. *See e.g., Disciplinary Case Nos. 2014-12282, 2014-12283 & 2014-12284* (Oct. 24, 2016) (finding respondents had implied consent to enter a home, because a resident opened a door wide and made no verbal objection to respondents' entry). *See also People v. Davis*, 120 A.D.2d 606 (2d Dept. 1986) (finding that a defendant's mother had consented to officers' entry by stepping aside from an open door); *United States v. Carreno-Arias*, 2002 U.S. Dist. LEXIS 24792 (S.D.N.Y. 2002) (finding implicit consent where an individual did not respond in the affirmative to an officer's request to enter, but opened the door fully and moved aside without protest). Here, although Colon opened the door wide for Respondent Trabolse, he did not step aside on his own. Instead, it appears Colon was standing near the threshold, thereby blocking the opening. Therefore, there was no consent to enter.

Although Respondent Trabolse's counsel did not make a hot pursuit argument, Respondent Trabolse was more likely than not in hot pursuit of Colon at the time that he entered the home. Legal Bureau Bulletin Vol. 44 No. 2 (Jan. 2014) states, "Police may enter a fleeing suspect's own home to make a warrantless arrest. This is because a person may not attempt to avoid an arrest simply by escaping into his own home. In addition, police may pursue a fleeing suspect who steps into the threshold, or doorway, of his home, and then flees back into his home." This tribunal has stated that the hot pursuit doctrine applies when the pursuit is immediate and fairly continuous from the scene of the crime. *See, e.g., Disciplinary Case No. 2012-7616* (Mar. 28, 2017).

Upon arrival, Respondent Trabolse, who was responding to a radio run for an assault in progress, witnessed a verbal argument between Person A and Colon, part of their ongoing dispute. Colon, in a hallway up a flight of stairs, was in a public area of the building. (Tr. 153) Person A had visible injuries to her face and neck and was in distress. (CCRB Ex. 2A) Colon retreated to his apartment, and the superintendent of the building pointed out Colon's door. Respondent Trabolse went after Colon with the intent to arrest him. He approached the door seconds later, and Colon came to the threshold. Ultimately, once Colon opened and unchained the door, Respondent Trabolse tried to make a threshold arrest. When Colon again pulled back into the apartment, Respondent Trabolse followed him inside in order to arrest him. (Tr. 126-28) This was a continuous pursuit, wherein Respondent Trabolse found Colon at the threshold of his home, then saw him flee back when Respondent Trabolse tried to grab him. Although Respondent Trabolse did not initially tell CCRB he saw Colon upon arrival, this alone does not prove his assertion to be false. Based on these facts and the above legal standards, CCRB has not proven by a preponderance of the relevant, credible evidence that Respondent Trabolse did not have legal authority to enter Colon's apartment. Accordingly, I find Respondent Trabolse not guilty of Specification 2.

Specifications 3 and 4 charge Respondent Trabolse with using excessive force by punching and then tasing William Colon. Because they are similar charges and happened in quick succession, I will analyze them together. Section 221-02 of the Patrol Guide instructs, "Apply no more than the reasonable force necessary to gain control." Regarding Tasers specifically, Section 221-08 stipulates, "A CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present." Both sections define active resistance as "physically evasive movements to defeat a member of the service's attempt at control, including

bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.” These inquiries turn on whether Respondent Trabolse’s actions were reasonable to gain control of Colon, and I find that they were.

Based on the videos, the testimony of Respondent Trabolse and the consistent statement of Castiglia, I find that Colon was indeed actively resisting at the time force was used, as described by the Patrol Guide. I credit Respondent Trabolse’s claims that Colon was pulling his arms away and tucking them under his own body to avoid being arrested, as the videos corroborate this version of events. Indeed, the videos show that Colon’s own brother implored him to “stop fighting,” which further demonstrates that Colon was resisting in that moment. I also credit Respondent Trabolse’s concern at the time that Colon might dislocate his own arm while resisting underneath his body weight, and this too is covered by one of P.G. § 221-08’s criteria for using a Taser (“to prevent individuals from physically injuring themselves”). Similarly, the videos make plain that Respondent Trabolse first used punches and then the Taser in order to handcuff Colon. Once Colon was handcuffed, Respondent Trabolse stopped using force. I do not credit Colon’s claim that he was tased after being handcuffed, as the video proves otherwise: the Taser is only applied to his skin for a few seconds and comes off as soon as officers start saying, “He’s cuffed.”

Therefore, Respondent Trabolse’s use of force (the punches and Taser) were no more than the reasonable force necessary, and took place only while Colon persisted in actively resisting. This use of force was within the Patrol Guide standards. Accordingly, I find Respondent Trabolse not guilty of Specifications 3 and 4.

Respondent Cimmino

The sole specification against Respondent Cimmino charges him with being discourteous towards Colon by saying, “Shut the fuck up, you little shit.” The video makes clear that Respondent Cimmino made this statement, so the only question is whether this comment was excusable or whether it was discourteous. I find that it was the latter.

Section 203-09 of the Patrol Guide calls for MOS to behave in a courteous and professional manner with members of the public. The tribunal has often found profanity on its face to be discourteous. *See e.g., Disciplinary Case No. 2018-18951* (Nov. 20, 2019) (respondent guilty of discourtesy for using the word “fucking” while attempting to convey to two parents that they should stop arguing and pay more attention to their child). However, there are certain situations where a profane remark made during a chaotic or stressful heat-of-the-moment situation does not constitute actionable misconduct. *See e.g., Disciplinary Case No. 2015-14379* (May 23, 2017) (no actionable misconduct where respondent used the word “fuck” for the purpose of getting a subject to comply with a lawful order during a stressful street arrest).

Here, Respondent Cimmino swore at Colon after he had been handcuffed. There were, at that time, no continuing exigent or stressful circumstances which might have excused a profane comment in the heat of the moment. Colon did begin the vulgar back-and-forth, but as a member of the Department, Respondent Cimmino is held to a higher standard of conduct. He should not have reacted by telling Colon, “You shut the fuck up, you little shit.” Accordingly, I find him guilty of the sole specification.

PENALTY

In order to determine appropriate penalties, the Tribunal, guided by the Department Disciplinary System Penalty Guidelines (“Disciplinary Guidelines”), considered all relevant facts

and circumstances, including any aggravating and mitigating factors established in the record. Respondent Cimmino's employment history was also examined (*See* 38 RCNY § 15-07). Information from Respondent's personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent Cimmino, who was appointed to the Department on January 20, 2004, has been found guilty of discourtesy, in that he told Colon, "You shut the fuck up, you little shit." CCRB recommended a penalty of 30 vacation days, the aggravated penalty under the Disciplinary Guidelines, because Respondent Cimmino has a prior case of discourtesy. For cases of discourtesy, the Disciplinary Guidelines list a presumptive penalty of five (5) days and an aggravated penalty of 10 days. An increase of 10 to 20 penalty days can be applied when (i) the same misconduct occurs within five years, and (ii) the prior misconduct had a penalty between 5 and 15 days.

Respondent Cimmino has a prior disciplinary adjudication, which involved similar discourtesy. In 2016, Respondent Cimmino forfeited seven vacation days for using the word "fuck" towards a motorist and issuing a disorderly conduct summons to said motorist without sufficient legal authority. He then committed the instant act of discourtesy in 2018. That he has previously been found guilty of discourtesy by this tribunal is clearly an aggravating circumstance. It is particularly troubling that even after this prior adjudication, Respondent Cimmino nevertheless insisted that he was allowed to use profanity in the instant case. (Tr. 226)

There are other aggravating factors present as well. Although he was not charged with excessive force, Respondent Cimmino clearly slapped Colon's shoulder. At the time, Colon was already handcuffed and not actively resisting. To slap his shoulder at that point was gratuitous and discourteous. Respondent Cimmino claimed that he merely touched Colon as he was trying to move past him, but the video belies this explanation, particularly because the slap itself is

audible. Respondent Cimmino gave a discourteous, dismissive slap to accompany his profane banter with Colon.

Additionally, Respondent Cimmino referred to Colon as a “little shit,” which is particularly demeaning because Colon is in fact four feet, eight inches tall, as a result of medical issues. While Respondent Cimmino cannot be expected to have known the full range of Colon’s medical history at that point, Colon was obviously well below the normal height for an adult male and the remark directly references this fact. Thus, it is not only vulgar but also biased.

Finally, Respondent Cimmino displayed an absence of candor before this tribunal. Even when listening to the recording, which very audibly includes the words “little shit,” Respondent Cimmino persisted in claiming that he did not say it. He also admitted to failing to correct a UF-61 report that he drafted with incorrect information about Colon throwing the Taser cartridge after learning that was untrue. It is troubling that in his prior adjudication, the ADCT also noted, “I find his lack of candor with the tribunal to be an aggravating circumstance.” *See Disciplinary Case No. 2015-13209* at p.24 (Aug. 15, 2016).

Based on the foregoing, I find that the aggravated penalty for discourtesy under the Disciplinary Guidelines must apply here, and that an additional 20 days should be added in light of the prior case of the same type of misconduct. Accordingly, I recommend that Respondent Cimmino forfeit 30 vacation days.



Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy R. Ryan". The signature is fluid and cursive.

Nancy R. Ryan
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER ANTHONY CIMMINO
TAX REGISTRY NO. 933693
DISCIPLINARY CASE NO. 2019-20841

Respondent was appointed to the Department on January 20, 2004. On his last three annual performance evaluations, Respondent received a rating of “Exceptional” for 2018, a rating of “Exceeds Expectations” for 2017 and a 4.5 rating of “Extremely Competent/Highly Competent” for 2016. He has been awarded two medals for Excellent Police Duty.

In 2016, Respondent forfeited seven (7) vacation days after being found guilty of (i) making a discourteous and profane remark to a motorist and (ii) issuing a disorderly conduct summons without sufficient legal authority. Respondent was twice placed on Level I Force Monitoring, from March 13, 2006 to May 10, 2007 and from July 13, 2010 to August 8, 2011, for having received three or more CCRB complaints in a one-year period.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials